



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**

4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500004

**O.P. No.13 of 2010**

**Dated 03.06.2016**

Present

**Sri P. Rama Mohan, Member and  
Adjudicating Officer**

**In the matter of enquiry into non-compliance of backing down instructions of the Andhra Pradesh State Load Dispatch Centre (APSLDC) by M/s GVK Gautami Power Limited during the period from June, 2007 to May, 2010 and for imposing penalty in the petition filed by APSLDC under Section 33 read with Sections 143 and 144 of the Electricity Act, 2003 in O.P. No.13 of 2010 before the Commission.**

**Between:**

A.P. State Load Dispatch Centre (APSLDC) through APTRANSCO

**Petitioner**

**AND**

M/s GVK Gautami Power Limited

**Respondent**

This petition has come up for hearing finally on 29-12-2015 in the presence of Sri P. Shiva Rao, Legal Advisor for the petitioner, APSLDC and Sri M. Sodekar, Advocate for the Respondents and after hearing both the parties extensively and carefully going through the material on record passed the following:

**O R D E R**

A Petition is filed by the above petitioner u/s 33 r/w Sections 143 & 144 of the Electricity Act, 2003 in the matter of Non-compliance of backing down instructions of APSLDC by the Independent Power Producers (IPPs) during the period from June 2007 to May 2010 praying for certain reliefs.

**Background facts in brief:**

1. On 23-07-2010, APSLDC filed a petition before the Commission alleging that M/s GVK Gautami Power Limited did not comply with the backing down instructions given by it under Section 33 of the Act and requested the Commission to appoint an Adjudicating Officer to enquire into the matter and to direct the Adjudicating Officer to pass order requiring M/s GVK Gautami Power Limited to pay Rs.5, 00,000/- for each non-compliance and to direct the Respondents to pay the costs of litigation.
2. The said petition in O.P.No.13 of 2010 came up for hearing before the Commission on 05-01-2013 and after hearing the rival contentions, the Commission passed a detailed Order on 15-04-2013, wherein, in exercise of powers vested with it, Sri R. Ashoka Chary, the then Member of Commission was appointed as an Adjudicating Officer to conduct enquiry into alleged non-compliance of backing down instructions issued by APSLDC to M/s GVK Gautami Power Limited.
3. In pursuance thereof, the Adjudicating Officer commenced enquiry proceedings in the presence of representatives of the parties concerned. However, as the Member of the then Commission had to leave the enquiry half way through due to the subsequent circumstances leading to constitution of the present Commission, a fresh Adjudicating Officer, who is a Member of the Commission as of now was to be appointed under Section 143 of the Act to continue the enquiry into the matter, as contemplated under Sections 33,143 and 144 of the Act. In conducting such enquiry, the orders of the Commission dated 15-04-2013 and any rules framed by the State Government under Section 143 (1) read with Section 180 (2) (1) of the Act shall also be guiding factors for the Adjudicating Officer.
4. The undersigned was appointed as Adjudicating Officer under Section 143 of the Act to conduct inquiry into the matter as contemplated under Sections 33,143 and 144 of the Act by the Commission vide its order dated 02-05-2015.

**Enquiry Details:**

5. Accordingly the Adjudicating Officer commenced enquiry proceedings and called for hearing both the parties on 14-09-2015 and directed the parties to appear before the Adjudicating Officer either in person or through their authorized representatives.

6. On 08-10-2015, the petitioner filed certain information relating to project profile, backing down clauses as per PPA and the ramp rates as detailed hereunder; a copy of the same has been handed over to the respondent and the matter was posted to 05.11.2015 for reply of the respondent.

Project profile - GVK Gautami

Installed Capacity : 464 MW (2 X 152.4 MW GTG + 164.05 MW STG), though erroneously they had shown as 220 MW (145 MW GTG + 75 MW STG)

Tariff Year : 5<sup>th</sup> April to 4<sup>th</sup> April

Backing down clauses as per PPA:

Schedule D:

Dispatch rights

(I) Generation of net electrical energy with alternate fuel shall be with prior approval of AP Transco.

(II) No dispatch instructions shall require the company to:

(a) Operate the project at a gross generating capacity below 60% of the project's installed capacity or such lower declared capacity for any period of time except in an emergency.

(III) The aggregate duration of backing down of generation pursuant to dispatch instructions (including the ramping time)

(a) For gross generating capacity between 85% to 100% of the project installed capacity, a back down limit of a maximum of about 590 MUs in a year.

(b) For a capacity from 60% to 85% - maximum limit for backing down of 1000 hours in a year.

(IV) The number of Dispatch instructions shall not exceed two (2) per day. However if the company re-declares its capacity, AP Transco is entitled to one more Dispatch instruction.

(V) Any Dispatch instruction issued by the AP Transco in violation of the technical limits specified in Schedule A shall not constitute a Dispatch Instruction for the purpose of this agreement.

(As per schedule A, the Dynamic parameters established shall be replaced and shall be deemed incorporated into the scheduled Dynamic parameters.

Minimum load is also comprised as one of the dynamic parameters.)

Ramp Rates: (Considered on par with 216 MW GVK-I)

Combined Cycle hot start ramp rate : 18 MW / Minute

Open Cycle : 4 MW / minute / Combustion Turbine

In all the non-compliance instructions, the duration is more than or equal to fifteen (15) minutes and operating in combined cycle mode. So as per Ramp Rate @ 18 MW / Minute, they can back down up to 270 MW. Hence, the insufficient Ramping time does not arise.

The total duration of backing down requested in a Tariff year has not exceeded 1000 hours. Based on the information filed, the total hours of backing down in financial year 2009-10 is 491.28 hours and there are 58 instructions each of which are allegedly punishable under section 33 (5) of Electricity Act, 2003.

7. In response to the above mentioned information furnished by the APSLDC on 08-10-2015, the respondents submitted their written submissions on 06-11-2015 stated to be giving detailed reply against each backing down instruction given by the petitioner that is covered under the present dispute and also requesting for dismissing the claim made by the petitioner and to declare that there were no violations on the part of the respondent, which are extracted as in the subsequent paras.

- (i) Vide order dated 08-10-2015, the Ld. Adjudicating Officer in the above captioned matter was pleased to direct to file replies to the data filed by the Petitioner, reflecting non-compliances with its backing down instructions by the Respondent. In compliance with the said directions, the Respondent is herewith filing its reply against each backing down instruction given by the Petitioner that is covered under the present dispute.
- (ii) The Respondent requests the Ld. Adjudicating Officer to treat the Counter Affidavit, Sur-Rejoinder and additional information filed by it in the matter, as part and parcel of this reply. The Respondent is not repeating or reproducing the said contents for the sake of brevity. At the same time, the Respondent is herewith filing data against each backing down instruction shown by the Petitioner in its compilation dated 08-10-2015, along with the copies of correspondence showing the objections raised by it in complying with the improper instructions, categorically stating that such instructions are not in order. The said data of the Respondent is filed and marked as

Annexure-1 thereof.

- (iii) From the statement filed by the Petitioner on 8th October 2015, it is submitted that the Petitioner has wantonly and deliberately did not mention the time of issuing any particular instructions, though, the duration of backing down was mentioned in the said statement. It is because of the said instructions were given instantaneously, without any end time and without assigning any reason and that the Petitioner has utterly failed to provide with the help of any evidence that the said instructions were given under emergency conditions. This fact can be established from the copies of backing down instructions given by the Petitioner that were brought on record by the Respondent. Further, from a plain observation of number of instructions given in a month, it can be safely inferred that the same were not given under emergency conditions, but at the same time, the said instructions were issued for load management. As such, the claim of the Petitioner falls off as envisaged under Section 4.3.8 of the Grid Code, r/w. Clause 2&3 of Schedule-D of the PPA.
- (iv) Further, it can be observed from the data provided by the Petitioner, that the Respondent was instructed to reduce the generation below 60% of its generation capacity, that too without giving sufficient time to ramp down the generation machines. As and when such instructions are received, the Respondent had immediately initiated load reduction upto the level of Technical Limits and intimated the Petitioner the difficulties in complying with instructions, as envisaged under Articles 2 & 3 of Schedule – D to the PPA as well as in terms of the Grid Code. As per the said terms, the Petitioner is obliged in law, to issue revised instructions with immediate effect and that if the Petitioner fails to do so the Respondent can continue generation as per the availability declaration given by it on the previous day, as contemplated under Section 4.3.4 of the Grid Code.
- (v) It may further be noted that the Respondent had categorically intimated to the Petitioner about the stabilization issues the generating units are facing soon after plant commissioning and that the instantaneous instructions would not only cause damages to the machinery but also leads to further liabilities with the gas suppliers and further stated that “Guatami Power plant is under stabilization after commissioning. The gas Turbine NoX

control system uses lean fuel gas mixture for optimum performance. At partial loads the flame stability gets disturbed and there were instances of machine tripping on flame failure when load was reduced. In order to maintain stability of operation of the plant we comply with dispatch to maintain 405MW.” As per the terms of the PPA under Clause 3.4 of Schedule – D as well as that of Section 4.3.6 of the Grid Code, the Respondent need not have to compromise on the safety of its plant, in order to comply with the inappropriate backing down instructions of the Petitioner. Copies of correspondence addressed to the Petitioner may kindly be referred to this effect. It is further submitted that the Petitioner is misleading the Ld. Adjudicating Officer by misstating that the ramping down can be done at the rate of 18 MW/Minute which is utterly false. As per the technical limits of the Project, the ramping shall be at the rate of 13.40 MW/Minute. As such, the instantaneous instructions given by the Petitioner could not be complied with keeping in view the safety of the plant, men and machinery. Even then, the Respondent had complied with all backing down instructions within the possible technical limits in order to safeguard its plant, men and machinery.

- (vi) It is also submitted that the Respondent took up the problem of machine tripping on flame instability during the load reduction (burner group change-over at lower loads for maintaining the NoX level). The OEM carried out elaborate analysis of the problem and the problem was subsequently resolved during maintenance outage of the units in the year 2010. Subsequent to the resolution of this technical problem, the Respondent complied with all the backing down instructions given by the Petitioner as admitted by the Petitioner.
- (vii) It is further submitted that the Respondent is obliged to respect the Gas Grid safety conditions envisaged under the Gas Supply and Transmission Agreements and that it is obligated to make good the losses the service providers thereunder may incur due to sudden non-drawl of the daily quantities of Gas agreed to be drawn by the Respondents. In the present case, due to the instantaneous backing down instructions given by the Petitioner, the Respondent was unable to issue backing down / non-supply instructions to its Gas suppliers and thereby incurred huge financial burden

in terms of Minimum Fuel-Off-Take Charges and / or Ship-or-Pay Charges. As per Clause 3.4 of Schedule-D of the PPA, the Petitioner is liable to make good the losses so incurred by the Respondent. The entire liability of the Respondent in this regard cannot be attributed to the Respondent as the said liability was accrued by the Respondent due to utter failure of the Petitioner in complying with its obligations under Section 4.3.3 of the Grid Code, whereunder, the Petitioner is obliged to give dispatch instructions under non-emergency conditions, by 16:00 hrs on the previous day, to the generators (the Respondent herein in this case), that too by duly considering the availability declarations given by the Respondent at 10 AM on the previous day. As such, the Petitioner is liable to reimburse all such expenses incurred by the Respondent in terms of penalty towards the minimum-off-take charges, as envisaged under the Gas supply agreements, which were duly approved by the Petitioner.

(viii) It can also be observed from the backing down instructions given by the Petitioner that the same were not given under “emergency conditions” but the same were given only for normal load management under the head “until further instructions”. This goes to show the failure of the Petitioner in properly scheduling the power generation and in maintaining the Grid Safety. These failures tantamount to the violation of the Grid Code on part of the Petitioner as envisaged under Section 4.3 of the Grid Code as well as under Clause 3.4, Schedule-D of the PPA. As such, the Respondent shall not be made liable to the penalties demanded under the present petition. At times, the Petitioner has issued more than two (02) dispatch instructions in a day, in violation of the PPA terms.

8. On 25.11.2014, the petitioner, stating that all the claims of Respondent submissions in reply to the data filed by them are not tenable, prayed that the Adjudicating Officer may be pleased to reject the memo and submissions of respondent, and allow the petition as prayed for, as it is clearly evident that the respondent not complied the instructions of APSLDC under the circumstances and submissions, which are extracted in the subsequent paras hereunder.

9. In reply to para 7 (ii) supra, every day one or more moments of emergency in grid may occur but for giving backing down instructions emergency is not mandatory. As per the PPA amended article Schedule D 3.4 (iii) (b), it is mentioned as “For a

capacity from 60% to 85% - maximum limit for backing down of 1000 hours in a year” and 3.4 (iv) it is mentioned as the number of instructions shall not exceed two (2) per day. Hence it can be understood from these clauses that petitioner can give two dispatch instructions subject to limitations. As per the dispatch rights mentioned in scheduled D of PPA read with Technical limits of Schedule A of PPA and duly considering PPA amendment on 17.7.99 all the instructions are in order and technical minimum is 60% of the Project’s installed capacity or such lower declared capacity. Hence complied with technical limits is not acceptable. A copy of PPA clause 3.4 (b) is enclosed.

10. In reply to para 7 (iii) supra, as per PPA and Grid code only the dispatch instructions are given.

11. In reply to para 7 (iv) supra, ramping times are duly considered while calculating non-compliance. Non-compliance quantum of Energy is calculated after deducting the ramping times. Instructions are as per grid code and PPA.

12. In reply to para 7 (v) supra, respondent not even maintained 405 MW on 30-04-2010. Simply neglected the LDC instructions. As per the details given, they have not even reduced their generation by 10% on 30-04-2010 on both the occasions. Ramping times are duly considered while calculating non compliance. Non compliance quantum of Energy is calculated after deducting the ramping times.

13. In reply to para 7 (vi, vii & viii), as per PPA and Indian Electricity Grid code and Code of Technical Interface only the dispatch instructions are given.

As per Schedule – A clause 3: The dynamic parameters of each unit and the project will initially be those projected in the EPC contract. During testing under the EPC contract, the company will establish Dynamic parameters being adjusted and verified prior to the COD of each unit and the project COD, the dynamic parameters established by the company shall replace those projected in the EPC contract and shall be deemed incorporated into this schedule. The dynamic parameters shall comprise minimum load and etc. Further, even in amendment of PPA 60% of backing down limit is not amended. All non-compliance instructions and those where non-compliance is more than 40% are submitted.

14. On 05.12.2015, the respondent filed a copy of the memo dated 21.02.2014 along with the copies of relevant technical documents, filed by them before the then



adjudicating officer appointed by the erstwhile APERC while adjudicating the disputes. They further requested that the technical inspection by the OEM contractor was made jointly along with GVK Industries Ltd., Phase-II, and a common report was submitted by the OEM contractor and the same may be considered for assessing the technical specifications and technical limits of the respondent's plant in assessing the compliance done by the respondent with the backing down instructions given by the petitioner. By Memo dated 21.02.2014, the respondent attempted to bring to the notice of the Adjudicating Officer that the teething problems and stabilization problems in the first year of operation of any thermal plant is a common phenomena and all the types of problems that are likely to come are not fully anticipated and cannot be totally avoided during the commissioning stage. Further, they have also stated that in Gautami plant also they have encountered some problem as above and every effort was made to solve the problem at the earliest so as to ensure smooth and reliable operation of the plant thereafter and therefore subsequently all these problems were solved and as a consequence they have complied with all the dispatch instructions to the full in the year 2011 and 2012.

15. On 5th January 2015, the respondent submitted their written arguments which are as in the subsequent paras.

16. The Respondent is a Generating Company, as defined under Sec 2(28) of the Electricity Act, 2003. Respondent has entered in to an Amendment Agreement to Power Purchase Agreement dated 31-03-1997 on 18-06-2003 (PPA) for generation of 464 MW Gas based Power Project at Peaddapuram, East Godavari District with Transmission Corporation of Andhra Pradesh Limited (APTRANSCO).

17. It is submitted that as per the PPA, the Respondent is obliged to generate and supply the entire power that has been generated by the project, solely to the APTRANSCO/APDISCOMs, the said generation and sale shall be in accordance with certain rules and regulations laid down by the Electricity Act, 2003 ("the Act") and the Grid Code, 2000 ("the Code"), in addition to the terms of the PPA. Section 33 of the Act empowers the Petitioner herein to "Optimally schedule" the power generation and maintaining the grid safety in a particular State, inclusive of the Project and that the Petitioner in order to maintain the grid safety, provided the scheduling is proper from a legal perspective. To achieve the said purposes, the Petitioner can direct / instruct the power generators either to increase or decrease the power generation. At the same time, the said power of the Petitioner is obliged to follow the procedure

enumerated under the Code in consonance with the provisions of the Act and the terms of the PPA. Clause 4.3.6 of the Code also categorically prescribes that if any instruction given by the Petitioner is in violation of the prescription of the Code, the instruction will not be considered as an instruction and that the generator can continue generation of power as per the availability declaration given by it on the previous day. Therefore, it is binding on the Petitioner that it shall respect the technical terms of the PPA while scheduling the power dispatch. Moreover, the provisions under the Section 32 of the Act should be read in conjunction with the provisions of the Section 33 of the Act. Relevant portion of Section 32 reads as

*“32. (2) the State Load Despatch Centre shall-*

*(a) be responsible for optimum scheduling and dispatch of electricity within a State, in accordance with the contracts entered into with the licensee or the generating companies operating in the State...”*

and the order of the Sections also determines that the Petitioner should honour first the contractual terms between the parties before issuing any dispatch instructions to the Respondents.

18. Further, as stated above, the Petitioner is obliged to follow the terms of the PPA, the Act and the Code. All instructions issued by it shall be within the precincts of the binding principles envisaged there under. It can be observed from the original list of non-compliances filed by the petitioner in the present case in comparison to the list of non-compliances shown by them in the data sheet submitted on 22-12-2015, the number of violations initially alleged were brought down from 58 to 14. Thus, it can be safely interpreted that the Petitioner has admitted and conceded that its claim relating to 44 alleged non-compliances against the original number of 58 non-compliances was in fact wrong and that the compliances made by the Respondent with reference to the said 44 instructions were proper and legal as the same were within the precincts of the Act, the Code and the PPA and that there remain only 14 alleged non-compliances that are to be dealt with by the Ld. Adjudicating officer to test the compliances made by the Respondent.

19. As per the Code, the Petitioner can instruct the Respondent to back down its generation, as part of grid operations and maintenance. But at the same time, the Petitioner has to comply with certain terms of the PPA, the Code and with the Act. As

per the PPA, the Petitioner has to observe and respect the technical limits of the generating turbines either to ramp up or ramp down the power generation. The Petitioner is also obliged to respect the obligations of the Respondent; it has any obligations to be complied with under ancillary or incidental agreements that were entered into with and third party, for the purpose of generating power. The Respondent has entered Gas sales and Supply Agreement with the Reliance Industries Limited and NECON Ltd. and Gas Transmission Agreement with the Gas Authority of India Limited (GAIL) (both these Agreements will be referred to as the "Fuel Supply Agreements"). The Petitioner is obliged to consider the threat to the Project and the men working therein, as and when there are sudden backing down instructions seeking the reduction of larger quantum of generation, which may lead to tripping of the gas turbine, throwing the lives of the men to danger. In addition to it, the Petitioner will also be liable to make good the losses that the Respondent had to incur in reference to the said instantaneous instructions as well as any liabilities incurred under the Fuel Supply Agreements. While this being so, as per Cl.4.3.6 of the Code, as and when there is an instruction from the Petitioner, if the Respondent feels that the same cannot be complied with due to the prevailing plant conditions / circumstances if the Respondent intimates immediately to the Petitioner, the Petitioner is obliged to modify the instruction suitably. Failing which, the instruction shall be considered as no instruction and that Respondent is entitled to continue the generation as per the availability declaration given by it on the previous day. The Respondent could not comply with the backing down instructions of the Petitioner, as the same were given instantaneously without giving sufficient time to ramp down the generation and that the said instructions were given without any end time. When the Respondent immediately intimated to the Petitioner about the difficulties in complying with the said instructions, the Petitioner did not take any steps to modify the instructions. As such, as stated above, as per Cl. 4.3.6 of the Code, the instructions shall not be treated as instructions at all, and any non-compliance with the same as per the Petitioner shall not be treated as a non-compliance and that the Respondent shall not be made liable for any penalty. Copies of correspondence addressed by the Respondent to the Petitioner intimating the difficulties in complying with the above referred backing down instructions are already on record and the Respondent is not annexing the same herewith with intent not to repeat the documentation.

20. Further, the Petitioner claims that the said backings down instructions were given under emergency conditions and that it is fully empowered by the Code to give

instantaneous instructions under emergency conditions. But Petitioner from his statement filed on 8<sup>th</sup> October, 2015 wantonly and deliberately did not mention the time of issuing any particular instruction, though the duration of backing down was mentioned in the said statement. It is because of the said instructions were given instantaneously, without any end time and without assigning any reason and that the Petitioner has utterly failed to provide with the help of any evidence that the said instructions were given under emergency conditions. The Respondent humbly submits that under Cl.4.3.8.1 of the Code, the Petitioner is obliged to justify that the instantaneous backing down instructions were given under specific emergency conditions, once the said emergency conditions met with. The Respondent submits that even after repeated requests made by it, the Petitioner never ever justified that the instantaneous instructions so given were in fact given to meet the emergency conditions. It is pertinent to submit here that the Respondent never denied such instantaneous instructions in toto. It had complied with such instructions to the maximum extent possible and within the technical limits of the Project, keeping the safety of the Project, men and machinery therein. It is submitted that as per the technical limits the ramping down can be done at the rate of 13.40 MW/Minute only. Thus, as per Cl. 4.3.8.1 of the Code, the acts of the Respondent shall be treated as compliant with the instantaneous instructions given by the Petitioner. Extract of the Cl. 4.3.8.1 of the Code is already on record and as such, the same is not reproduced here.

21. It is further submitted that the Respondent had categorically intimated to the Petitioner about the stabilization issues, the generating units are facing soon after plant commissioning and that the instantaneous instructions would not only cause damages to the machinery but also leads to further liabilities with the gas suppliers and further stated that "Gautami Power plant is under stabilization after commissioning. The Gas Turbine NoX control system uses lean fuel gas mixture for optimum performance. At partial loads the flame stability gets disturbed and there were instances of machine tripping on flame failure when load was reduced. In order to maintain stability of operation of the Plant we comply with dispatch to maintain 405 MW."

22. It is submitted that the Respondent took up the problem of machine tripping on flame instability during the load reduction (burner group change-over at lower loads for maintaining the NOX level). The OEM carried out elaborate analysis of the

problem and the problem was subsequently resolved during maintenance outage of the units in the year 2010 and further the petitioner has issued more than two dispatch instructions in a day, in violation of the PPA terms.

23. So far as the quantum of penalty sought by the Petitioner is concerned, the Respondent, at the cost of repeating its stance in the matter, reiterate that it has not violated any of the dispatch instructions given by the Petitioner and that it had complied with the same within the technical limits of the Project and as such, the Respondent is not liable to pay any penalty. Further, the Petitioner has sought to impose Rs.5 lacs (Rupees five lacks only) against each violation or non-compliance with its backing down instructions. In this regard, the Respondent relies upon the provisos to Section 33, 143 read in consonance with Section 144 of the Act.

While Section 33(5) reads as “If any licensee, generating company or any other person fails to comply with the directions issued under sub-section (1), he shall be liable to a penalty not exceeding rupees five lacs. That means the maximum penalty that can be imposed can be up to Rs.5 Lacs, if there is more than one instruction given by the Petitioner. Further, Sections 143(2) reads as “... on such enquiry, he is satisfied that the person has failed to comply with the provisions of Section 29 or section 33 or section 43, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections”. Further, 144 prescribes that “144. Factors to be taken into account by adjudicating officer. While adjudicating the quantum of penalty under section 29 or section 33 or section 43, the adjudicating officer shall have due regard to the following factors, namely;

- a. The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- b. The repetitive nature of the default”.

From a plain reading of the above provisions it can be safely concluded that

- (a) The Act is not prescribing penalty of Rs.5 Lacs against each and every direction, but if there are more than one direction and if at all any violation is found, the maximum penalty that can be imposed shall not exceed Rs.5 Lacs;
- (b) In the present case, as the Petitioner has not proved with any evidence that the Respondent has made any disproportionate gain or unfair advantage by violating the instructions.

- (c) In the Present case, the Respondent has not violated the terms of PPA, the Code and the Act; indeed Petitioner has violated the same.

24. It can be stated, in consideration to the above stated facts and legal position that the Respondent neither violated the instructions, nor repeatedly violated the instructions. In fact, though the said instructions were bad in the eye of law, with intent to cooperating with the Petitioner in safeguarding the grid safety, the Respondent had reduced/backed down the generation of the plant to the maximum level within the technical limits. In doing so, Respondent had to face certain liabilities under the Fuel Supply Agreements it had entered into with third parties. It is also pertinent to submit at this juncture, that there are certain cases pending before the APERC with claims made by the Respondent against the Petitioner, seeking reimbursement of the Ship-or-pay charges or Minimum Fuel-Off-take charges it had incurred under the Fuel Supply Agreements, as the Respondent could not draw the agreed quantities of Gas from either the gas supplier or from the Gas transporter due to the sudden and unscheduled backing down instructions given by the Petition. In consideration to the above referred factual position, Respondent humbly submits that the Ld. Adjudicating Officer may be pleased to avoid imposition of any penalty against the Respondent herein. For the reasons stated herein above, the Respondents humbly prays the Ld. Adjudicating Officer to be pleased to treat the acts of the Respondent were fully compliant with law, that the backing down instructions given by the Petitioner were bad in the eye of law; the compliances made by the Respondents in backing down the generation was proper in the prevailing circumstances, and that the Respondent are not liable to pay any penalty; and that the Ld. Adjudicating Officer may be pleased to dismiss the petition /claim made by the Petitioner herein.

25. The submissions made by the petitioner on 3rd February 2016 are as in subsequent paras.

26. All the claims of respondent submissions in reply to the data filed by the petitioner are not tenable.

27. The claims made at para (18) supra are incorrect. In-fact, all the instructions are given in discharging the responsibility of SLDC as per Electricity Act Section 32.2(a) and PPA technical limits for optimum scheduling in load crash, high frequency conditions. In 4.3.6 clause of code of technical interface, it is stated to comply with the dispatch instructions issued by SLDC. 4.3.6 Clause of code of technical interface is reproduced as below.

4.3.6 Action Required by Generators: All Generators shall provide hourly generation (MW and MVar) to SLDC on real time basis. All Generators and CPPs shall comply promptly with a dispatch instruction issued by SLDC unless this action would compromise the safety of plant or personnel. The generator and CPPs shall promptly inform SLDC in the event of any unforeseen difficulties in carrying out an instruction. All Generating Units shall have Automatic Voltage Regulator (AVR) in service. All Generators shall promptly transmit outage notice to APTRANSCO / SLDC intimating all unplanned outages of any generating units / auxiliaries, which reduce the generation contribution to the grid. All Generating Units shall have the governor available and in service and must be capable of automatic increase or decrease in output within the normal declared frequency range and within their respective capability limit. Generators shall immediately inform SLDC by telephone of any loss or change (temporary or otherwise) to the operational capability of any Generating Unit which is synchronized to the system or which is being used to maintain system reserve. Generators shall inform SLDC any removal of AVR and / or governor from service with reasons. CPPs shall similarly inform any change in status affecting their ability in complying with dispatch instructions. On receiving Notice to synchronise by SLDC, generators shall synchronise the particular unit to the grid within the time prescribed. Inability to do so shall be intimated to SLDC without loss of time. Generators shall not de-synchronise Generating Units, other than in respect of CPPs, without instruction from SLDC except on the grounds of safety to plant or personnel which shall be promptly reported to SLDC. Generators and CPPs shall report any abnormal voltage and frequency related operation of Generating Units/feeders promptly to SLDC. Generators shall not synchronise Generating Units, other than in respect of CPPs, without instruction from SLDC. In emergency situations, the Generator may synchronise Units with the grid without prior intimation in the interest of the operation of the grid following standing instructions developed for such purpose under “contingency planning”. Should a Generator fail to comply with any of the above provisions, it shall inform SLDC promptly of this failure. SLDC may instruct generators to keep any CDGU as hot standby. The generator shall comply with such instructions.

A clause shall be included into the PPA for the charges payable by APTRANSCO to the generator for keeping a CDGU as hot standby.

Articles of PPA does not envisage that generator can continue generation of power as per the availability declaration without complying with SLDC directions. In fact as per PPA generator has to comply with SLDC directive.

Hence as per sections 32 & 33 of Electricity Act, 2003, Indian Electricity Grid Code, Code of Technical interface and PPA, generator has to comply the directives of SLDC. Respondent contention of generating as per the availability declaration is factually incorrect, evidently false.

28. The claims of respondent made at para (19) supra are not tenable and false. All the 58 instructions data submitted to the Adjudicating Officer are only non compliance instructions. All said instructions entails with consequences of penalties. Further the claim of respondent that it had accepted all as dispatch instructions and submitted remarks to all the instructions as complied is not correct. In these remarks for some of the instructions, it is mentioned as if the same is complied up to technical limits. Hence once again the petitioner submitted the details of non compliance to the Adjudicating Officer. The list of non compliance instructions which are not even back down up to 70% of DC level has been submitted. But it can not be construed as remaining instructions are exempted. The petitioner never agreed for exemption of any of the instructions.

29. The claims of respondent made at para (20) supra that the instructions are complied with terms of PPA, the code and the Act is not correct. Nowhere it is mentioned that the “petitioner is obliged to modify the instruction suitably, failing which the instruction shall be considered as no instruction”. Further as per CTI clause 4.3.8.1 in high voltage management, failure of generator to follow the SLDC instructions will constitute a violation of the CTI and will entail with consequence of penalties.

30. Regarding Ramp rates, Respondent specified ramp rate as 13.40 MW/ Minute. Respondent failed to state in their remarks to the data submitted by petitioner that as Ramping time is insufficient in respect of any particular instruction. All the instructions have sufficient ramping time. Ramping time is allowed while deciding non compliance. Hence all the instructions entail with penalties.



31. In reply to para (21) supra, frequency at the time of backing down, average frequency of back down duration and maximum frequency data is submitted. All the above instructions come under high frequency management. Some instructions are given for load generation balancing in merit order dispatch.

32. In reply to para (22) supra, dispatch instructions are given as per Electricity Act, 2003, Code of technical interface and PPA clauses only. As per PPA, technical limit is not 405 MW, backing down also mentioned specifically. Hence the respondent contention is wrong.

33. In reply to para (23) supra, such issues should come through proper amendment of PPA or mutual agreement in the contract. The SLDC has to follow contracts of various generators while dispatching the generation. Hence the respondent remarks are not correct.

34. In reply to para (24) supra, the quantum of penalty considered by CERC in a similar case is enclosed. Hon'ble CERC penalized APTRANSCO against grid discipline in petition no. 80/2009 order dated 11th May 2009. For 122 instances Rs. 1.22 Crores penalized at one lakh per each instance. A copy of order is enclosed.

35. In reply to para (25) supra, energy charges already paid to the respondent. Respondent has not complied with any of the said instructions issued by APSLDC.

36. Under these circumstances and submissions, it is clearly evident that the respondent have not complied the instructions of APSLDC. Hence it is prayed that the Adjudicating Officer may be pleased to reject the claims made by respondent in its written arguments, and allow the petition as prayed for.

## **LEGAL PROVISIONS**

37. Section 32 of the Electricity Act, 2003 prescribes the Functions of State Load Dispatch Centres and is reproduced hereunder:

**“32. (1) The State Load Dispatch Centre shall be the apex body to ensure integrated operation of the power system in a State.**

**(2) The State Load Dispatch centre shall,**

***a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the Contracts***

*entered into with the Licensees or the generating companies operating in that State;*

- b) monitor grid operations;*
- c) keep accounts of the quantity of electricity transmitted through the State grid;*
- d) exercise supervision and control over the intra-state transmission system; and*
- e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.*

**(3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.”**

38. Further, Section 33 of the Electricity Act.2003 specifies that:

**“33. (1) The State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State.**

**(2) Every Licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the direction issued by the State Load Despatch Centre under sub-section (1).**

**(3) The State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.**

**(4) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State Grid or in relation to any direction given under sub-section(1), it shall be referred to the State Commission for decision:**

***Provided that pending the decision of the State Commission, the directions of the State Load Despatch Centre shall be complied with by the Licensee or generating company.***

***(5) If any licensee, generating company or any other person fails to comply with the directions issued under sub-section (1), he shall be liable to a penalty not exceeding rupees five lacs.”***

39. The provisions of the Electricity Act, 2003 relating to adjudication are reproduced below:

#### **Section 143**

***(1) For the purpose of adjudging under this Act, the Appropriate Commission shall appoint any of its Members to be an adjudicating officer for holding an inquiry in such manner as maybe prescribed by the Appropriate Government, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.***

***(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the adjudicating office, may be useful for or relevant to the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of section 29 or section 33 or section 43, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.”***

#### **Section 144**

***“While adjudicating the quantum of penalty under section 29 or section 33 or section 43, the adjudicating officer shall have due regard to the following factors, namely:-***

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;***
- (a) the repetitive nature of the default.”***

## ANALYSIS

40. The material on record and the submissions made by the parties concerned before the Adjudicating Officer is carefully examined and the following issues can be broadly identified where both the parties are having rival contentions.

(a) **ISSUE 1:** Whether all the 58 nos. backing down instructions allegedly not complied by the respondents (which constitutes violation of instructions), were valid

(b) **ISSUE 2:** Whether imposition of penalty is warranted? And if so, how much?

41. Both these issues will be considered together since these two are related with each other.

During the proceedings before the Adjudicating Officer, APSLDC reiterated its contention that M/s GVK Gautami Power Limited did not comply with the backing down instructions given by it, thus APSLDC was forced to back down the lower cost generators, which has resulted in higher power purchase costs to the Licensees by way of pumping higher cost power of M/s GVK Gautami Power Limited into the grid. On the other hand, the allegations of non-compliance of the backing down instructions of APSLDC are vehemently denied by M/s GVK Gautami Power Limited, stating that the said backing down instructions were complied with up to the technical limits and for those units that were not able to back down were duly informed to the APSLDC at the earliest.

42. Further, the APSLDC has submitted that Hon'ble CERC while delivering its order in petition No 80/2009, has imposed a total penalty of Rs.1.22 Crores @ Rupees one Lac each for all the 122 nos. of violations on APSLDC for allegedly not maintaining grid discipline wherein the penalty was imposed for each instance.

43. Referring to the provisions of Section 32 of the Electricity Act, 2003, the petitioner maintained that, in the interest of system security, APSLDC should have full control of the real time operation of the entire State Grid and maintain balance between the supply and demand at every moment, so that the Grid frequency remains within the safe limits as specified by the CERC and duly following the instructions of the Regional Load Dispatch Centre (RLDC).

In this process, whenever there is an increase in frequency beyond 50 Hz, (during which time the generation is more than the system demand), APSLDC issues instructions to marginal cost generators to back down their generation based on the merit order to ensure safety, security and economy of operations of the Grid.

44. It is the contention of APSLDC that M/s GVK Gautami Power Limited has violated the Grid Code by not complying with the directions of APSLDC to back down generation due to high frequency conditions in the grid on several occasions whereas all other generators have complied with such directions of the APSLDC which ultimately resulted in the backing down of low cost generation to maintain the system frequency within limits thereby the economy of operations in the system are affected to the detriment of the Licensees.

45. It is submitted by the Petitioner that, as per the procedure adopted by APSLDC, the Central Generating Stations (CGS) which operate under ABT Regime, the generators will be given choice of six (6) time blocks in case they need to back down. If there is an immediate requirement to back down, only the units of APGENCO or IPPs are to be backed down, as there is no ABT Regime for these generators.

46. In the question whether the other generators who have higher variable costs are backed down or not prior to M/s GVK Gautami Power Limited, as can be seen from the details of backing down instructions produced by the Generator, most of the instructions were issued just for five (5) or ten (10) minutes, without mentioning how long such back down continues and in the instant case the generator was directed to back down as per system requirement.

47. It is noticed from the information provided by APSLDC, a number of backing down instructions were issued to various generators based on the Merit Order Despatch (M.O.D.) to back down their generation and such instructions were complied with by the other generators. It is mentioned therein that the Respondents have not complied with the backing down instructions of APSLDC on 58 occasions from June, 2007 to May, 2010.

48. The contention of the Respondent is that the Petitioner is obliged to follow the terms of the PPA, the Act and the Code and that all instructions issued by the Petitioner shall be within the precincts of the binding principles envisaged thereunder.

It is contended that the Petitioner has to observe and respect the technical limits of the generating turbines either to ramp up or ramp down the power generation and also to respect the obligations of the respondent No.2 if it has any obligations to be complied with under ancillary or incidental agreements that were entered into with any third party, for the purpose of generating power. It is stated that the Respondent No.2 has entered Gas Sales and Supply Agreement with the Reliance Industries Limited and NECON Ltd and Gas Transmission Agreement with the Gas Authority India Limited (GAIL). It is further stated that the petitioner is obliged to consider the threat to the project and the men working therein, as and when there are sudden backing down instructions seeking the reduction of larger quantum of generation, which may lead to tripping of the gas turbine, throwing the lives of the men to danger and that the petitioner will also be liable to make good the loss that the Respondent had to incur in reference to the said instantaneous instructions as well as any liabilities incurred under the fuel supply agreements. While this being so, as per clause 4.3.6 of the Code, as and when there is an instruction from the petitioner, if the Respondent feels that the same cannot be complied with due to the prevailing plant conditions / circumstances and under the influence of the said conditions/circumstances if the Respondent intimates immediately to the petitioner, the Petitioner is obliged to modify the instruction suitably, failing which the instruction shall be considered as no instruction and that the Respondent is entitled to continue the generation as per the availability declaration given by it on the previous day. The Respondent could not comply with the backing instructions of the petitioner, as the same were given instantaneously without giving sufficient time to ramp down the generation and that the said instructions were given without any end time. When the Respondent immediately intimated to the Petitioner about the difficulties in complying with the said instructions, the Petitioner did not take any steps to modify the instructions. As such, as stated above as per clause 4.3.6 of the Code, the instructions shall not be treated as instructions at all, and any non-compliance with the same as per the Petitioner shall not be treated as non-compliance and that the Respondent shall not be liable for any penalty.

49. The Respondent, while admitting that the petitioner is fully empowered by the Code to give backing down instructions under emergency conditions, quoting clause 4.3.8.1 of the Code, claims that the petitioner is also obliged to justify the

instantaneous backing down instructions given under specific emergency conditions once the said emergency conditions were met with.

50. The Petitioner, while contesting the claims made by the Respondent, stated that all the backing down instructions were given in discharging the responsibility of SLDC as per Section 32 (2) (a) of the Electricity Act, 2003 and PPA technical limits for optimum scheduling in load crash, high frequency or spill-over conditions.

51. Quoting clause 4.3.6 of the Code of Technical Interface (CTI), the petitioner stated that the Respondent is obliged to comply with the backing down instructions given by the Petitioner. Whereas it is contended by the Respondent that as per Cl.4.3.6 of the Code, as and when there is an instruction from the Petitioner, if the Respondent feels that the same cannot be complied with due to prevailing plant conditions/circumstances and under the influence of the said condition /circumstances, if the Respondent intimates immediately to the Petitioner, the Petitioner is obliged to modify the instruction suitably, failing which, the instruction shall be considered as no instruction and that Respondent is entitled to continue the generation as per the availability declaration given by it on the previous day. The Petitioner contended that nowhere it is mentioned that the "Petitioner is obliged to modify the instructions suitably, failing which the instructions shall be considered as no instruction". It reiterated that as per CTI clause 4.3.8.1, in high voltage management, failure of generator to follow SLDC instructions will constitute a violation of CTI and will entail with consequence of penalties.

52. The Petitioner further stated that the Ramping time was allowed while deciding non-compliance.

53. It can be seen that there is no limitation on the number of dispatch instructions given by the Board (now APSLDC) if they are given in an emergency and in a real time operation of the power system, the APSLDC will be a better judge to decide the nature (whether certain situation was an emergency or not) and there is no reason to believe that APSLDC may give inappropriate instructions to one particular Generator when it is obligated to operate the power system under strict adherence to well-established and standard practices.

54. It is observed that APSLDC, as the power system operator in the State of Andhra Pradesh, in the process of discharging its duties under the provisions of the Electricity Act, 2003 and the state Grid Code, has given certain backing down instructions to reduce generation to a certain level which was not complied with fully by the Respondent (Generator) referring to certain provisions of the PPA, the Code and the Act.

55. While sub-section (2) (a) of Section 32 of the Electricity Act, 2003 recognises the contracts entered by the Generator with the Licensees in accordance with which, the optimum scheduling and despatch of electricity is to be done by the SLDC, sub-section 2(e) speaks about the responsibility of SLDC for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance the Grid Standards and the State Grid Code. And as per subsection (1) of Section 33, SLDC may give such directions and exercise such supervision and control as may be required for ensuring the integrated operations and for achieving the maximum economy and efficiency in the operation of power system in the State, and as per sub-section (2) of Section 33 every generator shall comply with the directions issued by the SLDC under sub-section (1) while sub-section (5) of Section 33 says that if any licensee or generator fails to comply with the directions issued under sub-section(1), he shall be liable to a penalty not exceeding rupees five lacs.

56. The main function of APSLDC is to maintain the Grid Stability. If the frequency goes beyond 50 Hz (i.e., in case where the Supply is more than the Demand), the APSLDC instructs the Generators, as per the merit order, to back down. It is the system requirement and as per Section 33 of the Electricity Act, 2003, every generator shall comply with such instructions and there is no other alternative to the generator but to comply.

Backing down means the instructions of SLDC or RLDC (conveyed through SLDC) for reduction of generation of a generating unit under abnormal conditions such as high frequency, low system demand or system constraints as envisaged by the system operator.

As per the Code of Technical Interface (AP Grid Code), clause 4.3.8., which is extracted below, APSLDC shall monitor the frequency of the transmission system and take action to ensure that they are within the acceptable limits in co-ordination with



SRLDC. Corrective action shall be initiated when frequency deviates by 1% from the nominal value.

4.3.8.1 High Frequency Related Emergencies: When the frequency is tending to increase above the statutory upper limit, SLDC shall request the Generators to reduce generation and request SRLDC to take necessary action at Regional level. While reducing generation, merit order despatch procedure shall be followed by SLDC. In order to implement merit order despatch, the relevant cost data shall be furnished by all CDGUs on one-month ahead basis. The instructions to reduce generation will be issued by SLDC by telephone communication. **Failure of a generator to follow the SLDC instructions in this context will constitute a violation of the CTI and will entail penalties.** During periods of high frequency operation, the SLDC telephone instructions to Generators shall supercede other provisions of the CTI, and all Acts, Rules and Regulations of State and Central Governments. Adequate authority shall be delegated to the duty Engineers of SLDC to enable them to take spot decisions for on-line operation of the Grid. On demand by a generator the SLDC shall confirm its verbal instruction by written instructions after the operation is completed. SLDC is responsible for complying all Codes, Acts etc., and must justify its instructions in the light of Code, Acts, etc., or must be ready to justify any deviation in dealing with an unforeseen emergency threatening the security of the Grid.

57. As Grid Operation being a common service, laws governing them need to be followed by all in letter and spirit, as any grid failure would lead to suffering by all the concerned. Also, as envisaged in the Section 33 of the Electricity Act, 2003, the SLDC is also bestowed with the responsibility of ensuring the integrated grid operations and for achieving economy and efficiency in the operation of the power system in the State which apparently would need the SLDC to implement the Merit Order Despatch in its true sense. This goes to show that the SLDC is also required to maintain the economy of operations when it comes to the question of spillage of either Srisailem or Nagarjuna Sagar and operation of Merit Order Despatch (MOD).

Hence the main contention of the Respondent that “the backing down instructions issued by APSLDC were in the process of and for load management but not the system emergencies and hence it is not binding on the generator for following such instructions” does not hold much water and does not qualify to be accepted

because achieving economy and efficiency of operation of the power system is also an EQUALLY IMPORTANT function of the State Load Dispatch Centre (APSLDC).

58. If there are any technical constraints to the Generator for backing down as per APSLDC requests, the same needs to be informed to APSLDC immediately to enable them to take further course of action to maintain the system security.

59. In the present case, the other contention of the respondent is that its inability to reduce the generation beyond the Technical Limits specified by the OEM and was conveyed to the APSLDC. On perusal of the letters written by the Generator to the APSLDC, it shows that the generator has not reduced the generation upto the required level as requested by APSLDC due to various reasons such as:

- (i) The units are under stabilization
- (ii) The duration of the backing down was not indicated and the dispatch instructions were given for very short period.
- (iii) APTRANSCO is not giving Day ahead generation schedule and hence it becomes difficult for Day ahead gas nomination to RIL/RGTIL resulting in positive imbalance in GAIL and RGTIL network.
- (iv) We are not able draw the allocated gas capacity for the day which will attract minimum off-take charges of per gas supply agreement with GAIL,
- (v) The units are already operating at technical minimum limits and any further reduction in generation will lead to unstable operation and may endanger the safety of the equipment and men

60. From the cursory reading of all the correspondence, it is observed that the reasons are mostly relating to the PPA conditions, technical minimum limits of the OEM or other contractual obligations for gas transportation.

61. With regard to the plea of the Respondent that the unit is under stabilization period, it is observed that from the perusal of records that as per the definitions in the Amended and Restated PPA, the stabilization period means, in respect of each generating unit, each ninety day period commencing on the COD of the said generating unit and, in respect of the Project, the ninety day period commencing on the Combined Cycle COD. In the instant case, the COD after combined cycle

operation was declared as 05-06-2009 and the period of violations (starting from 06-09-2009) is clearly after the ninety days period of stabilization i.e., 05-09-2009 and hence the issues relating to the stabilization period need not be taken into consideration.

62. If there are any PPA conditions not to back down beyond certain hours in a billing month or tariff year, or below certain technical limits as per the OEM recommendations, they are all commercial terms and conditions and need to be addressed accordingly by way of amendments to the PPA but certainly not in the form of non-compliance (either in part or full) of the backing down instructions which may threaten the grid security. Such a provision has been made, though in a different context, in Clause 4.3.6 of CTI to provide a remedy to the Generator, if he is made to keep the generator as a hot standby. If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given u/s 33 (1) of the Electricity Act, 2003, it has to be referred to the Commission which option the Generator has not chosen to exercise whereas it is the APSLDC that has filed a petition before the Commission, apparently out of the responsibility to exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in the State. It will not out be of context to mention here that the PPA was signed by both the parties prior to the Grid Code and enactment of the Electricity Act, 2003 and there were certain amendments made to the PPAs by the company M/s GVK Gowthami Power Ltd. in 1997 and later modified in 1999.

It is also to be significantly noted here that the Commission, while delivering the order dated 15-04-2013 for the appointment of the Adjudicating Officer where the request of the petitioner for appointment of the Adjudicating Officer to enquire into the case and other related prayers were made, has made an observation that though there may be conditions in the PPA, the Act prevails over the PPA but however left it to the Adjudicating Officer to decide whether it can be entertained about backing down instructions only in case of emergency or otherwise (Para 11).

63. It is interesting to note here that the Respondent has contended that the order of the Sections in the Electricity Act, 2003 determines that the Petitioner should honour first the contractual terms between the parties before issuing any dispatch instructions to the Respondents. Apparently the respondent was referring to Section

64. (2) (a) where the functions of the SLDC are prescribed wherein the SLDC is responsible for optimum scheduling and despatch of electricity within a State, in accordance with the *contracts (emphasis applied)* entered into with the Licensees or the generating companies operating in that State and Section 33 (1) , (2) & (5) of the Act where the SLDC is empowered to issue directions to the generating Company or any other person connected with the operation of the power system and essentiality of compliance of such directions by them and the consequence of non-compliance of such directions are provided. The moot question here is that whether the order of the sections of the Act or the significance of the sections of the Act is important. If the spirit of the sections in the Act is to be rightly interpreted, Section 32 of the Act indicates the responsibility of the SLDC to take into account, such contracts between the generating companies and the Licensees ; Section 33 of the Act prescribes the responsibility of the generating company to comply with the directions of the SLDC (given in exercise of its supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in the State) and consequence of such non-compliance. Undoubtedly the responsibility bestowed on the SLDC under Section 33 is of paramount importance since it involves optimising the power system operations and conservation of scarce resources and thus serving a larger interest of the public in general and electricity consumers in particular as well the responsibility of ensuring discipline among the various participants in the network.

65. However, it is also pertinent to note that the Respondent's inability to reduce the generation beyond the technical limits fearing threat to the safety of the equipment, men and other machinery also cannot be lost sight of in view of the in-built provisions, protections and remedies provided in the PPA and also the Code of Technical Interface (CTI) apart from some compelling obligations on the part of SLDC as provided in the Electricity Act, 2003 as mentioned in Para 46 supra as well as the advisory remarks of the OEM that running the units below the Technical Limits may lead to flame instability and may cause damage to the turbine components.

66. Keeping this in view, the Adjudicating Officer, for arriving at the likely number of backing down instructions which were not complied with and qualify for imposing any penalty, sought to obtain the details of the backing down instructions taking into account ,

- (i) the number of non-compliance instructions considering the limitation of two instructions per day even in emergency and
- (ii) 70% technical limit as per the recommendations of the Original Equipment Manufacturer (OEM) even though as per Art 2.1 (b) (i) of the PPA, the backing down is permitted upto 60% of the Declared Capacity in an Emergency and as provided in Art.3.4 (ii)(a) Schedule – D of the PPA.

67. Accordingly, the petitioner has submitted that out of the 58 total number of non-compliances, considering the limitation of two instructions only during one day, the number of non-compliances will remain as 58 only and if the limitation of backing down upto technical limit is also accepted, the number of non-compliances will further come down to only 14.

68. After taking the above aspects into consideration, and in view of the foregoing discussion, the undersigned is of the opinion that making the above assumptions is reasonable and can be taken into consideration to finalise the total number of non-compliances. Thus the total number of non-compliances for which the generator shall become liable to penalty will be 14 and the same has also been impliedly admitted by the Respondents in their submissions made on 5<sup>th</sup> Jan, 2016. Here it is to be considered that during the real time operation of the power system, the SLDC will be considering the actual power flows that exist at that particular moment of time and assess the situation at that particular moment of time but not the installed or declared capacities of the generators to decide the requirement of any backing down or pressing into operation of any generator or curtailing any load. Therefore the output of the machine at the instant of issuing backing down instructions will be more appropriate and relevant than the Declared Capacity of the project, however, subject to the technical limits of the generating machines based on the OEM recommendations. In view of this, the number of non-compliances for which the Respondents will become liable for imposing penalty can be taken as 14.

And as the said 14 non-compliances were repetitive in nature, though warranting the maximum penalty to be levied, the undersigned, keeping in view all the aspects, and also observing that it is for the first time that such a situation has arisen after the major private participation in the power generation in the State of Andhra Pradesh which obviously necessitates for taking a considerate stand and also from

the stand point of view that all the players in the network operation have to be placed on the same level-playing field while dealing with such complex technical issues, feels that a penalty of Rupees One Lakh per each violation is justifiable. But, at the same it also has to be understood that the violators of grid discipline cannot always get away with meagre penalties and any such violations which threaten the grid security and economy and efficiency of power system operation will be dealt with sternly in future.

69. Now coming into the issue of loss sustained by the Licensees, as alleged by the Petitioner, due to backing down of low cost generation as a result of non-compliance of the backing down instructions by the Respondent (Generator), it is a fact that APSLDC, as a power system operator had to resort to backing down of certain low cost generation so as to maintain the security of the grid and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code as envisaged in the Electricity Act, 2003. The loss sustained by the Licensees due to backing down of low cost generation instead of the marginally costly generator, i.e., the Respondent Generating Company in the instant case at the time of issuing the backing down instructions as per the mandatory Merit Order Dispatch Stack comprising of all the generators is nothing but the consequence of non-compliance of the backing down instructions given by the SLDC which liability is to be borne by the non-complying generator. There appears to be no reason not to accept the correctness of the details of day-wise backing down instructions (given by SLDC) which were not complied with by the generator and the low cost generation details, the backing down of which was resorted to by the SLDC as a part its statutory duty as the system operator to back down the next low cost generator in the Merit Order Stack. (The details are shown in the **Annexure-I.**)

70. Even though, prima facie, there does not seem to be any direct amount of disproportionate gain or unfair advantage, as mentioned in Section 144 of the Electricity Act, 2003 made by the Respondent by way of resorting to the above said violations, since the Respondent did generate power and pumped it into the Grid and received the energy charges from the Licensees to that effect; the losses sustained by the Licensees, as rightly argued by Petitioner, as a result of the acts of the Respondents would need to be treated as the indirect gain to the Respondents as such losses would not have occurred, had the Respondent complied with the backing down instructions issued by the Petitioner.

71. Thus it will be in the fitness of the things that the loss sustained by the Licensees due to backing down of the low cost generation as a result of non-compliance of the above 14 (Fourteen) backing down instructions by the Respondents, is made good by the Respondent to the Licensees.

72. The initiative and efforts of APSLDC, the petitioner, in initiating the litigation against non-compliance of its instructions issued as a part of its duty as the system operator, though not the direct beneficiary of the litigation, speaks about the responsibility it has assumed in maintaining the discipline among the various participants in the network.

## **CONCLUSION**

73. In the light of the above discussion, the undersigned is of the opinion that the Respondent can be held guilty of contravention of and non-compliance with the provisions of Section 33(1) of the Act thereby becoming liable for penalty as per section 33(5) of the Electricity Act, 2003 apart from the responsibility of making good the loss sustained by the Licensees in the action of SLDC having backed down the low cost generation to meet the power system requirements as per the merit order stack at the moment of such non-compliance.

74. Thus the undersigned is fully satisfied that the circumstances warrant imposing a penalty on the Respondent i.e., M/s GVK Gautami Power Limited to the extent of Rupees One Lakh for each non-compliance apart from making good the loss of Rs. 6,89,956/- (Rupees Six Lakh Eighty Nine Thousand Nine Hundred and Fifty Six Only) sustained by the Licensees due to backing down of Low cost generation associated with the said 14 non-compliances. Thus, against 14 contraventions, the Respondent i.e., M/s GVK Gautami Power Limited shall pay a penalty of Rupees Fourteen Lakhs plus Rs.6,89,956/-(Rupees Six Lakh Eighty Nine Thousand Nine Hundred and Fifty Six Only) towards making good the loss sustained by the Licensees, totalling to Rs.20,89,956/-(Rupees Twenty Lakh Eighty Nine Thousand Nine Hundred Fifty Six Only). Both the parties will bear their own costs.

75. I order accordingly.

Sd/-  
(P. Rama Mohan)  
Member and Adjudicating Officer  
A.P.E.R.C.

C.P.No. 13 of 2010

ANNEXURE - I

S.No.	Name	date	time	date	time	duration	Non-co m MU	No. D.I.	FREEDOM NCY AT THE TIME OF 80	AVG FQ DURING BD	MAX FQ DURING D	MOD INSTRUCTION
6	GOWTHAMI	07-02-09	22:50	08-02-09	00:00	1:10:00	0.158	1	50.16	50.11	50.23 MCO	MCO
7	GOWTHAMI	08-02-09	00:00	08-02-09	07:25	7:25:00	1.001	2	50.05	49.94	50.54 MCO	MCO
45	GOWTHAMI	26-02-10	21:40	27-02-10	00:00	2:20:00	0.154	1	50.19	49.92	50.23 MCO	MCO
46	GOWTHAMI	27-02-10	00:00	27-02-10	03:10	3:10:00	0.209	1	50	49.92	50.65 MCO	MCO
48	GOWTHAMI	16-02-10	17:30	16-02-10	19:40	1:30:00	0.144	1	49.58	49.57	50.28 MCO	MCO
49	GOWTHAMI	17-02-10	17:30	17-02-10	18:45	1:15:00	0.116	1	49.63	49.59	49.01 MCO	MCO
50	GOWTHAMI	31-02-10	17:35	31-02-10	18:40	1:05:00	0.099	1	49.58	49.94	50.31 MCO	MCO
51	GOWTHAMI	14-02-10	17:15	14-02-10	18:25	1:10:00	0.089	1	49.97	49.97	49.97 MCO	MCO
52	GOWTHAMI	18-02-10	17:05	18-02-10	18:55	1:20:00	0.147	1	49.31	49.89	50.17 MCO	MCO
53	GOWTHAMI	19-02-10	17:25	19-02-10	18:45	1:20:00	0.112	1	50.05	49.85	50.28 MCO	MCO
54	GOWTHAMI	26-02-10	17:00	26-02-10	18:55	1:50:00	0.147	1	50.21	49.97	50.51 MCO	MCO
55	GOWTHAMI	26-02-10	16:50	26-02-10	18:50	2:00:00	0.164	1	49.87	49.77	50.17 MCO	MCO
56	GOWTHAMI	30-02-10	07:20	30-02-10	08:40	1:20:00	0.192	2	49.86	49.57	49.81 MCO	MCO
57	GOWTHAMI	30-02-10	17:20	30-02-10	18:45	1:25:00	0.209	2				
58	GOWTHAMI	30-02-10	17:20	30-02-10	18:45	1:25:00	0.209	2				

variable cost (Rs/KWH)	Gen. Cost Rs	b/d at that moment variable cost (Rs/KWH)	differential cost	Amount lost to L
183,000	288225	RTPP-2	174,000	9,000
183,000	183228	LANCO	139,320	43,678
178,000	274120	RTPP	174,000	4,000
178,000	372020	RTPP-2	174,000	4,000
179,000	257760	VTS	157,000	22,000
179,000	208088	VTS	157,000	22,000
179,000	175418	RTPP-2	174,000	4,000
178,000	157827	VTS	157,000	21,000
178,000	262253	RTPP-2	174,000	4,000
178,000	199360	RTPP-2	174,000	4,000
178,000	261067	VTPS-IV	140,000	38,000
179,000	291920	VTPS-IV	140,000	39,000
178,000	341260	RTPP-2	174,000	4,000
178,000	355555	RTPP-2	174,000	4,000
TOTAL COST		DIFF. COST.		68,756